

PUBLIC UTILITIES COMMISSION505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

May 21, 2002

6/27/2002
Agenda ID #656

TO: PARTIES OF RECORD IN APPLICATION 98-07-003

This is the proposed decision of Administrative Law Judge (ALJ) Barnett, previously designated as the principal hearing officer in this proceeding. It will be on the Commission's agenda at the next regular meeting, which is scheduled for June 27, 2002. This matter was categorized as ratesetting and is subject to Pub. Util. Code § 1701.3(c). Pursuant to Resolution ALJ-180 a Ratesetting Deliberative Meeting to consider this matter may be held upon the request of any Commissioner. If that occurs, the Commission will prepare and mail an agenda for the Ratesetting Deliberative Meeting 10 days before hand, and will advise the parties of this fact, and of the related ex parte communications prohibition period.

The Commission may act at the regular meeting on June 27, 2002, or it may postpone action until later. If action is postponed, the Commission will announce whether and when there will be a further prohibition on communications.

When the Commission acts on the proposed decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the proposed decision as provided in Article 19 of the Commission's "Rules of Practice and Procedure." These rules are accessible on the Commission's website at <http://www.cpuc.ca.gov>. Pursuant to Rule 77.3 opening comments shall not exceed 15 pages. Finally, comments must be served separately on the ALJ and the assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

/s/ ANGELA K. MINKIN
Angela K. Minkin
Asst. Chief
Administrative Law Judge

ANG: sid

Decision **PROPOSED DECISION OF ALJ BARNETT** (Mailed 5/21/2002)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company
for Verification, Consolidation, and Approval of
Costs and Revenues in the Transition Revenue
Account.

Application 98-07-003
(Post PX Direct Access
Credits)
(Filed July 1, 1998)

**SOUTHERN CALIFORNIA EDISON COMPANY'S HISTORICAL
PROCUREMENT CHARGE PROPOSAL**

(See Appendix A for a list of appearances.)

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**OPINION AUTHORIZING THE PROPOSAL OF
SOUTHERN CALIFORNIA EDISON COMPANY TO
ESTABLISH A HISTORICAL PROCUREMENT CHARGE**

I. Introduction and Summary

On October 2, 2001, this Commission and Southern California Edison Company (SCE) reached a Settlement Agreement in Federal District Court Case No. 00-12056-RSWL (Mcx) that allows SCE to recover its past procurement cost undercollections as measured by the starting balance in SCE's Procurement Related Obligation Account (PROACT). That balance was \$3.577 billion as of August 31, 2001. The Settlement Agreement was approved by the Federal District Court on October 5, 2001. SCE asserts that direct access (DA) and bundled service customers made equivalent contributions to the unrecovered procurement costs, because the credit that direct access (DA) customers received under past ratemaking was a perfect parallel to what bundled service customers were charged for procurement related costs. Under the current ratemaking framework; however, the surcharges adopted in 2001 are reflected in the generation rate component and DA customers' bills are credited with the entire generation rate component. SCE assert that this approach means that only bundled service customers are contributing to the recovery of the PROACT balance. SCE proposes to establish a Historical Procurement Charge (HPC), and to adjust the credit that DA customers receive so that DA and bundled service customers make equivalent contributions to the recovery of SCE's past procurement cost undercollections.

The California Large Energy Consumer Association (CLECA) and other parties assert that DA customers did not contribute to the undercollection in the same manner as bundled customers nor did many DA customers benefit from

the undercollection. The Utility Reform Network (TURN), and others, support SCE.¹ Public hearings were held before Administrative Law Judge Barnett and the matter was submitted.

We conclude that SCE should be authorized to establish a HPC and apply it to DA customers by reducing the DA customers' generation credit by 2.5¢/kWh.

II. Background

Since April 1998, SCE has offered service to two distinct types of customers. Bundled service customers receive the full range of electric services from SCE, which include energy procurement and delivery. SCE customers could also choose, under the DA option, to purchase energy from an energy service provider (ESP). SCE continues to deliver electricity to both DA and bundled service customers.

A. Rate Freeze

Total rates were frozen at levels in effect on June 10, 1996 for all customers. Bundled service customers paid these frozen rates for the duration of the transition period (January 1, 1998 through March 31, 2002 or a Commission-authorized earlier end date). These frozen tariff rates included a generation rate component. The generation rate component was unbundled into the market

¹ Parties filing briefs include: the Alliance for Retail Energy Markets (AReM), the California Energy Commission (CEC), California Industrial Users (CIU), CLECA, the California Manufacturers & Technology Association (CMTA), California Retailers Association (CRA), the Energy Producers and Users Coalition (EPUC); the Kroger Co. and Tricon Global Restaurants, Inc., New West Energy Corporation (New West), San Diego Gas & Electric Company (SDG&E), Sempra Energy Solutions (Sempra), 7-Eleven, Inc. (7-Eleven), TURN, and SCE.

price and a competition transition charge (CTC) component. The CTC was calculated residually as the difference between the fixed generation rate component and the market price, where the market price was based on SCE's cost of procuring power from the Power Exchange (PX) and the California Independent System Operator (ISO). All customers paid the CTC and the CTC revenues were used to pay for SCE's stranded generation costs, also known as transition costs.

B. The Avoided Cost Credit

SCE calculated a market price for billing purposes utilizing the cost and quantities of power purchased from the PX. This PX price was used to determine the contribution to the recovery of CTC (when compared to the generation rate component of frozen rates) and also represented SCE's avoided cost of procuring energy. The PX component of the generation rate was either applied to recover the cost of purchasing power for bundled service customers or given as a credit to DA customers. The credit reflected the fact that DA customers had chosen to procure their energy through an ESP rather than SCE. So long as the market price, or DA credit, remained below the generation component of the customer's frozen rate, the DA customer continued to make a contribution to CTC in exactly the same manner as a similarly situated bundled service customer.

III. History of the DA Credit

A. Zero Minimum Bill Provision

Because the DA credit was based on the market price from the PX, it was possible that the credit would exceed either the generation rate component or the entire bill. If the PX credit exceeded the generation rate component, there was a negative CTC, i.e., no contribution to recovery of stranded costs. If the PX credit exceeded the entire amount of the bill, meaning that the PX credit was

greater than the sum of the generation, distribution, transmission, public purpose, and the other rate components, there would be a negative bill. In other words, the DA customer would receive a credit for the entire utility bill. This is also known as a “credit” bill.

Prior to June 1999, under the adopted tariffs, DA customers receiving the PX credit could experience, at a minimum, a monthly bill of \$0. In D.99-06-058, the Commission approved a stipulation between SCE, Western Power Trading Forum, and Enron and eliminated the zero minimum bill provision. The elimination of the zero-minimum bill provision allowed DA customers to receive the entire PX credit even if it resulted in a negative (credit) bill. Prior to market dysfunctions in mid 2000, PX credits in excess of total monthly charges were generally carried over to succeeding months and were netted against positive bills.

B. Escalation of PX Prices

The rise of market energy prices in the summer of 2000 resulted in numerous occurrences of negative CTC entries. As PX credits in excess of total bundled services charges became the norm, DA customers enjoyed consistent credits for the entire bill. On January 5, 2001, SCE stopped making payments to DA customers utilizing ESP consolidated billing for credit bills resulting from the application of the DA credit. Prior to that time, SCE generally paid these DA customers for their credit bills upon request by the customer, or with the closing of an account. SCE states that the payment of these credit bills as well as the need to finance the costs of procuring energy for bundled service customers contributed to the deterioration of its cash and credit position. The credit bills for DA customers utilizing UDC consolidated or dual billing were carried forward

and were netted out against any positive bills even after SCE became non-creditworthy.

C. Going Forward Procurement Surcharges

On May 27, 2001, the Commission issued D.01-05-064, which adopted new rate levels for SCE customers, adding roughly 4¢/kWh to the frozen generation rate component. The new surcharge was comprised of the then existing 1¢/kWh emergency procurement surcharge (EPS) plus an additional 3¢/kWh authorized in D.01-03-082: the 3¢ surcharge did not apply to DA customers. The Commission did not state whether the EPS was applicable to DA customers. SCE had billed the 1¢/kWh surcharge to DA customers, but stopped after D.01-03-082 was issued. SCE began billing the new rates on June 3, 2001. At this point SCE's method was to credit DA customers with the generation rate of their otherwise applicable tariff (OAT). This approach resulted in DA customers avoiding surcharges adopted by the Commission in year 2001 on a prospective basis.

IV. SCE'S Procurement Related Liabilities

SCE asserts that it is clear that DA customers have contributed to SCE's procurement-related liabilities in the same manner as bundled service customers. Until the June rates were implemented, DA customers were receiving a credit based on SCE's weighted-average energy cost. To the extent this energy cost continued to exceed the generation rate component of frozen rates, SCE continued to incur a liability to fund both energy purchases for bundled service customers and energy credits for DA customers. With the subsequent drop in market energy and gas prices, SCE has received positive revenues from bundled service customers toward reducing its procurement-related obligations, while DA customers have contributed nothing to the recovery of the liabilities to which

they contributed.² SCE states that the proposed HPC is designed to rectify this inequity.

A. Equivalence of Impact on SCE's Liabilities

SCE explained its position with an example: Consider a bundled service customer with 1000 kWh usage during a particular billing cycle and an average rate of 10¢ / kWh, resulting in a total bill of \$100. If \$40 of this total amount is for recovery of non-generation transmission and distribution costs (T&D) then the customer contributed \$60 to recovery of SCE's procurement costs and uneconomic or stranded generation costs. As long as the price of power procured for this customer was less than 6¢ / kWh, the customer contributed positively to SCE's recovery of its transition costs. When the price of energy rose above 6¢ / kWh the customer did not contribute anything to recovery of transition costs and in addition, SCE started accumulating its procurement-related liabilities. For instance, if SCE had to procure energy for this customer at 14¢ / kWh, the customer contributed \$80 $[(14¢ / \text{kWh} - 6¢ / \text{kWh}) \times 1000 \text{ kWh}]$ to SCE's procurement-related liabilities for the billing cycle. In other words, from the customer's original bill of \$100, \$40 went to pay non-generation costs leaving only \$60 to cover generation costs. Because SCE incurred \$140 for the cost of procuring energy for this customer, SCE was left responsible for \$80 in procurement-related liabilities for this bundled customer.

SCE continued: Now consider a similarly situated DA customer. This customer's bill was first calculated just as for a bundled service customer (\$100),

² Under D.99-06-058, SCE is still liable to pay credits to DA customers should energy costs rise sufficiently.

and then the customer was credited for the cost of procured energy. When the cost of power was 3¢ / kWh, the DA customer would have received a credit of \$30, leaving a net bill of \$70. If the cost of power were 14¢ / kWh as in the previous example, the DA customer would have received a credit of \$140, resulting in a credit bill, or payment from SCE of \$40. Adding in the \$40 of non-generation costs incurred, SCE would be responsible for a total liability of \$80, exactly the same impact as the bundled service customer. SCE borrowed to pay these liabilities as long as it was creditworthy. Starting January 5, 2001, SCE could not borrow money and stopped making such payments. What SCE was not able to pay became a procurement-related liability to the ESPs performing consolidated billing. DA customers with dual or UDC consolidated billing continued to net their negative (credit) bills against subsequent positive bills from SCE even after SCE became non-creditworthy.

CLECA argues that SCE has failed to establish the responsibility of current direct access customers for recovery of a portion of its procurement undercollection amount. It says payment of direct access credits in excess of the generation rate component of frozen tariff rates occurred only because in 1999 SCE voluntarily entered into a stipulation with representatives of the ESPs to change the manner of calculating the direct access credit. The stipulation permitted the direct access credit to float with the PX price, going above the frozen rate level if necessary. No customer group asked for that stipulation and none signed it. It was strictly an arrangement between SCE and the ESPs, one in which SCE agreed to remove the “zero minimum bill” provision from its tariff in exchange for the ESPs’ dropping their demand to see the input data used by SCE to establish the monthly credit.

CLECA also contends that direct access customers generally received no benefit from the application of this billing methodology. It points out that among the SCE large commercial and industrial direct access customers in December 2000, the vast bulk of the accounts were using the ESP consolidated billing option. Under this arrangement, SCE sent its bill for transmission and distribution services directly to the ESP and looked entirely to the ESP for payment. When the amount of the direct access credit exceeded the frozen tariff rate, SCE provided a net credit. Until January 5, 2001, SCE would write a check for the accumulated credit balance to the ESP. CLECA believes that under this billing option, the net credit went to the ESP; it did not go to the customer. A review of the testimony of the witness sponsored by CLECA does not support this conclusion.

The witness for CLECA testified that DA customers did not benefit from the higher DA credits. She said “I am somewhat familiar with DA contracts, and I am generally familiar with the nature of some of the pricing arrangements agreed to by DA customers during the relevant period. In many of these cases, the customer was quite careful to protect itself against the possibility that energy prices might increase and that the sum of the charges under a DA transaction might exceed the otherwise applicable frozen tariff rate. They did so by choosing pricing that involved a small discount from the otherwise applicable frozen tariff rate (OAT minus), rather than a discount from the PX prices.” She said the effect of “OAT minus” pricing effectively shifted the risk of increasing market prices for power away from the customer and on to the ESP. The ESP was committed to supply power to the customer at the customer’s frozen tariff rate less a percentage discount, typically in the 1% to 3% range. Because the pricing under the contract was not tied to PX prices, the customer was insulated from the

possibility that a sudden natural gas price increase or other factors might drive up the PX prices to levels that exceeded its frozen OAT rate. As between the DA customer and the ESP, the DA credit was irrelevant; the pricing was strictly OAT minus a discount, and any DA credits actually paid were kept by the ESP. She said “under the ESP consolidated billing feature, the ESP assumed all of the customer’s payment obligations to SCE, and SCE rendered the bill to the ESP and looked to that entity for payment.” She concluded, therefore, “if SCE is seeking to recover procurement costs in excess of the average generation costs embedded in the frozen rates, it should look to the parties to whom it paid or will pay the PX or DA credit. If DA customers did not receive these credits directly from SCE, there is no reason to require customers to pay the HPC.”

CLECA’s presentation is not persuasive. Rather than supporting the proposition that DA customers did not benefit from the DA credit, it proves the contrary. The DA customer entered into an agreement by which the ESP priced its electricity at a discount to the applicable frozen tariff rates. In exchange, the DA customer gave its right to receive the DA credit to the ESP. The DA customer bartered its DA credit for a fixed electric rate. It could not be any clearer that the DA customer benefited from the DA credit.³

B. The Settlement Agreement

The Settlement Agreement between SCE and the Commission, approved by the Federal District Court on October 5, 2001, specifically identified

³ We have addressed the DA customer benefit issue because CLECA raised it and many parties support CLECA’s position. However, we wish to emphasize that in setting rates, past benefit is only one consideration of many. Taken to its logical conclusion, no customer who first took service from SCE after August 2001 (e.g., residential customers) would have to pay the PROACT portion of their electric bill.

SCE's procurement related liabilities. The unpaid credit bills which resulted from market energy prices in excess of SCE's generation rate are reflected in Schedule 1.1 of the Settlement Agreement as a procurement related liability to the DA customers' ESPs. The amounts SCE borrowed to pay the credit bills prior to January 5, 2001 or to purchase energy for current DA customers while they received bundled service are reflected in other line items of Schedule 1.1. The Settlement Agreement specifically identifies a starting balance for the PROACT that SCE is entitled to recover. The PROACT balance of \$3.577 billion as of August 31, 2001 was verified by the Commission's Energy Division on November 2, 2001.

The pertinent portions of the Settlement Agreement and Stipulated Judgment which pertain to this proceeding are:

A. Settlement Agreement

**ARTICLE 2
RATE STABILIZATION AND COST RECOVERY**

Section 2.1 Procurement Related Obligations Account (PROACT).

- (a) The CPUC will establish the Procurement Related Obligations Account (PROACT) by order. The opening balance thereof will be the excess of SCE's Procurement Related Liabilities as of August 31, 2001 over SCE's cash and cash equivalents on hand as of such date, *less* the sum of \$300 million. . . . The Parties estimate that the balance of the PROACT as of the date hereof is approximately \$3.3 billion.

- (b) SCE will apply all accrued Surplus⁴ to the PROACT on a monthly basis or such periodic basis as may be established by the CPUC, . . .

. . .

- (d) During the Recovery Period from and after September 1, 2001, all Surplus shall be applied to the PROACT. . . .

Section 2.2 Recovery of Procurement Related Obligations. The Parties hereby agree that during the Recovery Period SCE shall recover in retail electric rates its Procurement Related Obligations recorded in the PROACT. The Parties acknowledge that they each currently project that the maintenance of Settlement Rates will likely result in sufficient Surplus for SCE to recover substantially all of its unrecovered Procurement Related Obligations prior to the end of 2003. . . . (Emphasis added.)

Section 2.9 Intended Effects. The CPUC shall adopt such decisions or orders as it deems necessary to implement and carry out the provisions of this Agreement, it being understood that this Agreement and the Stipulated Judgment contemplated hereby shall be binding and irrevocable upon the Parties, notwithstanding such future decisions and orders of the CPUC. It is the intent of the Parties that SCE actually recover Procurement Related Obligations recorded in the PROACT, without offset, as rapidly as possible during the Rate Repayment Period consistent with the terms hereof, and in any event during the Recovery Period. (Emphasis added.)

⁴ “Surplus” means the difference, positive, or negative, if any, of SCE’s revenues from retail electric rates (including surcharges) during the Recovery Period over SCE’s Recoverable Costs for the same period. (Emphasis added.)

B. The Stipulated Judgment

...

3. As a party to the Agreement, the Commission (as distinct from the individual Defendants) joins in and agrees to be bound by all of the terms of this stipulated judgment. The CPUC agrees to waive any defense it may have to the Court's jurisdiction based upon the Eleventh Amendment, or other defense, for purposes of this case only.

...

E. Future Effect

1. The Agreement that is incorporated herein provides for SCE to recover certain costs in retail rates over time. An essential element of this stipulated judgment is to provide certainty that SCE will be able to recover such costs in accordance with the Agreement. SCE and the CPUC contemplate that third parties will rely on such certainty in extending credit to SCE. Accordingly, enforcement of this stipulated judgment and the Agreement are essential in order to restore SCE's creditworthiness, which is in the interest both of SCE and of the CPUC. (Emphasis added.)
2. The parties and their respective successors and assigns agree to be bound by the terms of this stipulated judgment and agree not to contest its validity in any subsequent proceeding. Defendants recognize that market prices may fluctuate, that state or federal law may be modified, and that other circumstances may change, and nevertheless intend that this stipulated judgment be binding and enforceable in the future in accordance with its terms. (Emphasis added.)

3. The Court enters this stipulated judgment and Agreement as its judgment, and retains jurisdiction to enforce the judgment in the future, as may be necessary.

Kroger and Sempra contend that the HPC proposal should be denied because the Settlement Agreement does not refer to or authorize the HPC. 7-Eleven states that the PROACT is only to be recovered from retail, or bundled customers. Those contentions have no merit. The PROACT balance includes SCE's liabilities and undercollections caused by the DA credit. The Settlement Agreement authorizes the recovery of the PROACT balance from retail customers through retail rates. DA customers are retail customers and pay retail rates. The HPC is merely the method of paying the PROACT balance for these customers. It results from the Settlement Agreement.

Kroger claims that the HPC violates Public Utilities Code Section 368(a), which prohibits the post rate-freeze recovery of undercollections incurred during the rate-freeze period. This claim is irrelevant. The Settlement Agreement between SCE and the Commission mooted any argument that SCE's undercollections should not be recovered through retail rates. The Settlement Agreement specifically permits SCE to recover the PROACT balance from customers through retail rates. As we said, DA customers are retail customers and pay retail rates.

Kroger also contends that the HPC would constitute retroactive ratemaking because SCE seeks to adjust DA customers' rates to make up for past unreasonable rates. EPUC claims that the PROACT is defective because it was created only after SCE incurred its undercollections. Both arguments are irrelevant. This proceeding is to implement a settlement approved by the federal court. We are not here to rehash past positions.

C. Securitization

Some parties have suggested that the PROACT balance be securitized and recovered over a longer time period. It is not clear whether these parties are seeking the securitization of the entire PROACT balance or only the DA customers' share of it. The Settlement Agreement does make an allowance for the Commission to approve securitization of all or a part of the PROACT balance "in order to reduce the retail rate impact" (Settlement Agreement, Section 2.2 (c)). In any case, to reduce the associated financing costs and assure the repayment of bonds necessary for securitizing the PROACT balance, SCE believes that some form of legislation will be required. Given the lead time required for passage of legislation and issuance of bonds, the administrative costs of issuing the bonds, and the short expected time for recovery of the PROACT balance from bundled service customers, SCE does not support the securitization option for DA customers. In addition, as described below, even with the HPC deducted from the current DA credit, DA customers will continue to receive a credit of about 8.5¢ / kWh.

If it is determined that direct access customers are to be held liable for repayment of a portion of the undercollection amount, CLECA recommends securitization of the entire \$3.577 billion (or the amount remaining unrecovered at the time of this decision). It says securitization has several advantages over the SCE proposal. First, it is contemplated in the Settlement Agreement. Second, it would provide immediate funds to pay off SCE's creditors and would restore the utility to financial health at an earlier date. Third, if the period were five years, it would permit an immediate rate reduction of perhaps 1.25¢ to 1.5¢ per kWh for all customers, bundled and direct access.

In our opinion, securitization is not a reasonable option, the parties suggesting it propose terms as long as five years. This is contrary to the Settlement Agreement's standard to collect the PROACT "as rapidly as possible." (Section 2.9.) Two years, as proposed by SCE is a reasonable period. It is consistent with the expected recovery of the bundled customers' portion of the PROACT balance.

V. HPC Proposal

A. Calculation of HPC

SCE proposes to establish an HPC for use in determination of the DA credit, based on the starting PROACT balance as verified by the Commission's Energy Division. SCE says, as described above, DA customers contributed to, and are responsible for, the PROACT balance in the same manner as are bundled service customers. Currently (since June 3, 2001) only bundled service customers are making payments towards the recovery of PROACT balance. The proposed HPC will recover the DA customers' share of SCE's procurement related obligations over a two-year period. This is consistent with the expected end of the recovery period for the balance of the PROACT from bundled service customers.

To calculate the HPC, the PROACT balance is first amortized, with interest, over two years. This annual revenue requirement for the HPC is then allocated to individual rate groups based on each group's contribution to SCE's procurement related liabilities. For most of the period from June 2000 to September of 2001, SCE's procurement costs, and the DA credit, exceeded revenues recovered through the generation component of retail rates. The net effects of this for both bundled service and DA customers were negative CTC contributions (as reflected in the negative Transition Revenue Account, or TRA,

balance) and increased liabilities for SCE. The contribution of each rate group to these negative monthly TRA balances are summed over 2000 and 2001 for each of SCE's 13 rate groups. The ratio of each rate group's total to SCE's system total is used to allocate the annual revenue requirement of the amortized PROACT balance among rate groups. Each rate group's allocation of the total HPC revenue requirement is then divided by the 2002 sales forecast for that rate group to calculate the HPC. These allocation factors and resulting rates are shown in Table 1 below.

Table 1
Historical Procurement Charge

Rate Group	2002 Forecast (GWh)	Rate Group HPC Allocator	PROACT Revenue Requirement (000's)	Allocated PROACT Revenue (000's)	Interim HPC (c/kWh)
Domestic	24,456.2	30.04%		\$582.1	2.380
GS-1	4,166.0	5.19%		100.5	2.412
TC-1	173.9	0.25%		4.8	2.740
GS-2	21,996.2	29.64%		574.5	2.612
TOU-GS	523.9	0.68%		13.1	2.509
LSMP	26,860.0	35.75%		\$692.9	2.580
TOU-8-Sec	8,955.8	11.91%		230.8	2.577
TOU-8-Pri	6,997.8	8.73%		169.2	2.418
TOU-8-Sub	7,931.9	9.45%		183.1	2.308
Large Power	23,885.5	30.09%		\$583.2	2.441
PA -1	621.7	0.64%		12.4	2.001
PA -2	592.4	0.65%		12.6	2.123
AG-TOU	884.9	1.16%		22.5	2.542
TOU-PA -5	718.0	0.87%		16.9	2.359
Ag. & Pump	2,817.0	3.33%		\$64.4	2.288
Street Lights	561.3	0.79%		15.4	2.738
System	78,580.0	100.00%	\$1,937.9	\$1,937.9	2.466

B. Modification to the Energy Credit

DA customers are currently credited the generation rate component of their OAT. This credit includes all surcharges adopted by the Commission since January 2001, in excess of 4¢/kWh. As a result, DA customers make no contribution to either going-forward power procurement costs (which includes the cost of both past and future DWR power purchases) or SCE's procurement related obligations, unlike bundled service customers who are currently fulfilling their obligation. SCE proposes to modify the currently effective credit calculation by subtracting the HPC from the generation rate of the DA customers' OAT before it is credited to them. The HPC would have the effect of lowering the credit paid to DA customers and contributing to the recovery of the PROACT balance.⁵ This lower credit is consistent with SCE's current weighted average energy cost, as evidenced by the surplus being contributed by the bundled service customers toward the recovery of the PROACT balance and still represents a system average DA credit of about 8.5¢/kWh. Upon authorization, SCE would modify its tariffs to include the HPC, by rate schedule.

Given that SCE has actually paid \$148 million of such credits and owes, by its own calculation, another \$243 million, CLECA submits that SCE should not be permitted to collect an average of 2.466¢ per kWh for 24 months from direct access load that is roughly 14% of SCE's total load. The charge, as proposed by SCE, is expected to generate more than \$540 million over the 24-month period, \$150 million more than SCE asserts it will provide in credits

⁵ Under the settlement, total revenues minus authorized costs ("Surplus") are booked to the PROACT account. Since the HPC reduces the DA credit, it will increase the revenues and the amount booked to the PROACT, expediting recovery of the balance.

and \$394 million more than it has paid to date. It appears to CLECA that direct access customers are being asked to pay more than their fair share.

CLECA argues that there is likely to be a serious mismatch between a customer's serving ESP during the high cost period and its serving ESP today. SCE's proposal places a very significant burden on current direct access customers to recover costs SCE incurred to provide credits to ESPs in the past. The customer may or may not have a contract with the same ESP who provided the service and received the credit in 2000, and it may or may not have completely different pricing and other contractual terms that make impossible any adjustment of the benefit and burden. It is unlikely that the ESP and the customer will have contracted to apportion this new cost element.

Finally, CLECA questions whether SCE should be permitted to recover these costs from anyone. It was SCE's decision to agree to take the market risk that the ESPs had acquired through their contracts with customers. Customers should not have to make SCE whole for that decision. It was the ESPs with whom SCE agreed to credit the excess over the frozen rates, it was the ESPs to whom SCE paid the credits, and it was the ESPs who benefited from the credits, not SCE's direct access customers. SCE should be directed to look to the ESPs for recovery.

CLECA's position is without merit. The amount SCE will collect from DA customers depends upon the amount of energy used by DA customers. The more they use the more the PROACT balance will be paid down during the two-year period. DA customers who return to bundled service will pay the bundled rate. The revenue retained by SCE's proposed modification to the energy credit is not meant to equal the amount SCE paid and is obligated to pay for negative credits. Should DA current use be less than prior use, the total amount DA

customers will be charged will be less than the negative credits paid by SCE. The proposed HPC applies to meter usage going forward. It does not reflect customer use in the past.

The formula is discussed above, in Section V. The other points made by the parties are irrelevant. The “mismatch” between customers served today and those served during the high cost period is not pertinent. Current customers pay current rates. The PROACT balance was fixed in the Settlement Agreement and is to be recovered through “retail rates.” It is too late to argue that those costs should not be recovered from anyone.

C. Overcollection

The PROACT balance of approximately \$3.8 billion is recovered through two revenue streams. The first is from bundled customers who currently pay the frozen rates plus a 4¢/kWh surcharge. The “Surplus” as defined in the Settlement Agreement is applied to reduce the PROACT balance. Bundled customers have been contributing to the PROACT balance since September 2001 in the amount of approximately \$250 million per month. The second is from DA customers. These customers have been paying nothing toward the PROACT balance and will not pay anything until this proceeding is concluded.

Under SCE’s proposal, DA customers will pay a share of the PROACT balance commensurate with the proportion of SCE’s total system load that is served through direct transactions. For example, if 15% of SCE’s system load is served under DA contracts, then DA customers will pay approximately 15% of the PROACT balance. If 5% is served, then DA customers will pay 5% of the PROACT balance.

Under SCE's current method for crediting DA customers, these customers only pay for transmission, distribution, and other non-generation costs. Therefore, the amounts paid by these customers exactly offset the costs associated with serving these customers and they do not contribute any surplus to the recovery of the PROACT balance. Under SCE's HPC proposal, these customers will not be credited with the entire generation rate component of their OAT. This results in HPC revenues being credited to the PROACT.

The HPC will be effective for the full 24-month period. The amount recovered through the HPC after the PROACT balance is recovered will be credited to the procurement cost account for bundled service customers. It is necessary for DA customers to pay their share of PROACT for two complete years out of fairness to bundled customers, regardless of when SCE recovers its PROACT balance. Otherwise, because of the delay in implementing the HPC, should the PROACT balance be recovered in less than the two-year HPC period, bundled customers would have paid a disproportionate share of the PROACT. Should the PROACT balance be recovered in less than the two-year HPC period, the excess amounts paid by DA customers will be credited to bundled customers.

Should the frozen rates contemplated in the Settlement Agreement be removed prior to the expiration of the two-year HPC period and there is no longer a generation credit to be given to DA customers, then SCE would convert the reduction to the credit to a charge on the DA customer's bill. For example, rather than reduce the generation credit from 11¢/kWh to 8.5¢/kWh, SCE would add 2.5¢/kWh to the DA customer's transmission and distribution bill. After the PROACT balance is recovered, and until the two-year HPC period is completed, the 2.5¢/kWh charge would be credited to the bundled customers.

VI. Comments on Proposed Decision

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(d) and Rule 77.1 of the Rules of Practice and Procedure. Comments were filed on _____, and reply comments were filed on _____.

Findings of Fact

1. SCE has credited DA customers with the generation rate of their OAT since June 3, 2001. This has resulted in DA customers avoiding surcharges adopted by the Commission in year 2001 on a prospective basis and DA customers making no contribution to SCE's Procurement Related Obligations, unlike bundled service customers who are currently paying these obligations.

2. As a result of the DA credit method, DA customers have contributed to SCE's Procurement Related Liabilities in the same manner as bundled service customers.

3. Since September 1, 2001, SCE has received positive revenues from bundled service customers toward reducing the PROACT balance, while DA customers have contributed nothing to the recovery of the liabilities to which they contributed.

4. SCE's HPC rectifies this inequity by making DA customers pay a fair amount of SCE's past procurement costs.

5. SCE reached a Settlement Agreement with the Commission in Federal District Court Case No. 00-12056-RSWL (Mcx) that allows SCE to recover its past procurement cost undercollections as measured by the starting balance in the PROACT.

6. The Settlement Agreement specifically identifies a starting balance for the PROACT that SCE is entitled to recover. The Commission approved the

PROACT balance of \$3.578 billion as of August 31, 2001 in Resolution E-3765. With interest, the balance is approximately \$3.8 billion.

7. Section 2.2 of the Settlement Agreement states that “SCE shall recover in retail electric rates its Procurement Related Obligations recorded in the PROACT.”

8. HPC will recover the DA customers’ share of SCE’s Procurement Related Obligations through current and future rates by applying the HPC to the electricity use of DA customers in SCE’s territory over a two-year period beginning 10 days after the effective date of this decision.

9. SCE will modify the currently effective DA credit calculation by subtracting the HPC as adopted from the generation rate of the DA customers’ OAT before it is credited to them. The HPC will have the effect of reducing future DA credits.

10. The HPC must be effective for the full 24-month period. The amount recovered through the HPC after the PROACT balance is recovered will be credited to the procurement cost account for bundled service customers. It is necessary for DA customers to pay their share of PROACT for two complete years out of fairness to bundled customers, regardless of when SCE recovers its PROACT balance.

Conclusions of Law

1. The Settlement Agreement between SCE and the Commission approved by the Federal District Court is binding on the Commission.

2. The Settlement Agreement provides that the PROACT balance shall be recovered “in retail electric rates.” This requirement cannot be modified.

3. Direct access customers of SCE pay retail electric rates and are obligated to pay a portion of the PROACT balance as described in this decision.

4. The DA credit methodologies that SCE implemented from January 19, 2001 through the present are reasonable on the basis that they: (1) establish the equivalence of contribution to SCE's past procurement related liabilities of DA and bundled service customers, and (2) are consistent with the calculation of Procurement Related Liabilities as set forth in Schedule 1.1 of the Settlement Agreement, which has been approved by the Commission in Resolution E-3765.

5. The HPC as described in Exhibits 101 and 102, and shown in Table V-I of Exhibit 102 (Table 1 of this opinion) is reasonable and is adopted.

O R D E R

IT IS ORDERED that:

1. Southern California Edison Company (SCE) shall begin charging direct access customers the Historic Procurement Charge (HPC) authorized by this Order 10 days from today's date. The HPC shall be in effect for two years from the date SCE begins charging the HPC.

2. Within five days of today's date SCE shall file an advice letter to implement this Order. The advice letter shall be effective 10 days from today's date subject to Energy Division determining that it is in compliance with this Order. Specifically the advice letter shall:

- a. Update tariffs to modify Schedule PE and Schedule DA to show the HPC in this Order that are applicable to direct access customers in each rate schedule;
- b. Provide sample bills for direct access customers in each rate group for which a specific HPC is assessed, and;
- c. Establish the HPC Refund Account. If SCE fully recovers Commission approved procurement related obligations that are currently being booked in the PROACT account less than

two years from the date SCE begins charging the HPC, SCE shall record by customer group in the HPC Refund Account, revenues associated with the HPC authorized by this Order. SCE shall begin recording revenues in the HPC Refund Account beginning on the day after SCE's fully recovers the procurement related obligations. SCE shall stop recording revenues in the HPC Refund Account two years from date on which SCE begins charging direct access customers the HPC. SCE shall credit interest on balances in the HPC Refund Account in the same manner as it credits interest in its Electric Deferred Refund Account. If SCE has not fully recovered its procurement related obligations two years from the date on which it begins charging the HPC, SCE shall eliminate the HPC Refund Account without recording any revenues in that account.

3. SCE shall file an advice letter 30 days after it stops recording revenues in the HPC Refund Account established pursuant to this Order. This advice letter shall set forth a plan to return revenues accumulated in the HPC Refund Account to SCE's bundled service customers. The plan to return revenues recorded in the HPC Refund Account shall be the same as the plan SCE uses to refund revenues accumulated in its Electric Deferred Refund Account, as authorized by Decision (D.) 96-12-025 and Resolution E-3525, except that (a) SCE will carry out the HPC refund plan one time only, (b) the HPC refund plan shall apply to all bundled service customers, and (c) SCE shall allocate the HPC refund such that revenues recorded in the HPC Refund Account for a specific customer group are returned to bundled service customers in the same customer group. This advice letter shall become effective upon approval by the Commission. SCE shall include workpapers with this advice letter that show the monthly entries to the HPC Refund Account for each customer group, and how these entries were calculated. After the Commission has authorized SCE to return the balance in the HPC

Refund Account to bundled service customers, SCE shall eliminate the HPC Refund Account.

4. Should the PROACT balance be recovered in less than the two-year HPC period, the excess amounts paid by DA customers shall be credited to bundled customers, in the manner set forth in the order.

5. Should the frozen rates contemplated in the Settlement Agreement be removed prior to the expiration of the two-year HPC period and there is no longer a generation credit to be given to DA customers, SCE shall convert the reduction to the credit to a charge on the DA customer's bill.

6. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.

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